

2009 DRAFTING REQUEST**Bill**Received: **09/23/2008**Received By: **jkreye**Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**By/Representing: **Lillethun**This file may be shown to any legislator: **NO**Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0102 -

Topic:

Withholding tax quarterly payments for pass-through entities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 09/23/2008	bkraft 09/23/2008	rschluet 09/23/2008	_____	mbarman 09/23/2008		State
/P2	jkreye 01/15/2009	nnatzke 01/16/2009	phenry 01/16/2009	_____	sbasford 01/16/2009		State
/P3	jkreye 01/30/2009	nnatzke 01/30/2009	phenry 02/02/2009	_____	cduerst 02/02/2009		State

FE Sent For:

<END>

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/P1	jkreye	/P1 bjk 9/23					

FE Sent For:

<END>

0371

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Pass-through Entities Quarterly Payments
- Tracking Code: BB010a
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Medium

Intent:

Require pass-through entities to make quarterly estimated payments of pass-through entity withholding tax for both nonresident and resident pass-through members.

Under current law, nonresidents are no longer required to make quarterly estimated payments on pass-through entity income. (See attached description and drafting instructions.)

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

Date: September 15, 2008

PROPOSAL 7: Pass-through Entities Quarterly Payments

DESCRIPTION OF CURRENT LAW AND PROBLEM

A pass-through entity is generally required to pay withholding tax on Wisconsin income allocable to its nonresident shareholders, partners, members, or beneficiaries. The withholding is due in a single payment, by the unextended due date of the pass-through entity's income or franchise tax return.

Requiring a single annual withholding payment raises the concern that nonresidents are treated more favorably than Wisconsin residents. Wisconsin residents are required to make quarterly estimated payments on pass-through entity income, while nonresidents make only annual payments.

Prior to 2005 law changes relating to pass-through entity withholding, nonresidents were required to make the same quarterly estimated payments on pass-through entity income as Wisconsin residents.

RECOMMENDATION FOR ACTION

Require pass-through entities to make quarterly estimated payments of pass-through entity withholding tax.

ADMINISTRATIVE IMPACT

Minimal. Administrative impact will be minimized by applying a simplified version of the existing rules for corporation estimated payments to pass-through entity withholding estimated payments.

FAIRNESS /TAX EQUITY

This proposal ensures that nonresident members of pass-through entities have the same estimated payment requirements (via pass-through entity withholding) as Wisconsin residents.

IMPACT ON ECONOMIC DEVELOPMENT

Minimal on an on-going basis.

FISCAL EFFECT

One-time increase in revenue of \$40 million in FY 2010.

DRAFTING INSTRUCTIONS

See Attachment 1

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Effective for pass-through entities' taxable years beginning on or after the date of enactment.

INTERESTED/AFFECTED PARTIES

Tax-option (S) corporations, partnerships, limited liability companies, trusts, estates

DOR CONTACT PERSON

Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY

Wendy Miller

Drafting Instructions: Estimated Payments for Pass-Through Entity Withholding

Repeal and re-create sec. 71.775(4), relating to the administration of pass-through entity withholding, as follows:

(4) ADMINISTRATION.

(a) Each pass-through entity that is subject to the withholding tax under sub. (2) shall file an annual return showing the amount of withholding paid to the state during the pass-through entity's taxable year. The annual return shall be filed no later than:

1. For tax-option corporations, the 15th day of the 3rd month following the close of the taxable year.
2. For partnerships, limited liability companies, estates, and trusts, the 15th day of the 4th month following the close of the taxable year.

(b) For the return required in par. (a), the department of revenue shall allow an automatic extension of 7 months or until the corresponding due date of the pass-through entity's federal income tax return or return of partnership income, whichever is later. Except for payments of estimated taxes, income or franchise taxes payable upon filing the return shall not become delinquent during such extension period, but shall be subject to interest at the rate of 12% per year during such period.

(c) Pass-through entities shall make estimated payments of the withholding under sub. (2) in 4 installments, on or before the 15th day of each of the following months:

1. The 3rd month of the taxable year
2. The 6th month of the taxable year
3. The 9th month of the taxable year
4. The 12th month of the taxable year

(d) The provisions in sec. 71.29(3), (3m), (4), (5), and (6), and (11), relating to estimated payments of income and franchise taxes for corporations, also apply to the withholding tax under sub. (2) for pass-through entities.

(e) Except as provided in par. (f), in the case of any underpayment of estimated withholding tax under sub. (2)(c), there shall be added to the aggregate withholding tax for the taxable year interest at the rate of 12% per year on the amount of the underpayment for the period of the underpayment. In this subsection, "period of the underpayment" means the time period from the due date of the installment until either the unextended due date of the annual return under par. (a) or the date of payment, whichever is earlier. If 90% of the tax shown on the annual return under par. (a) is not paid by the unextended due date of such return, the difference between that amount and the estimated taxes paid, along with any interest due, shall accrue delinquent interest under s. 71.91(1)(a).

(f) No interest is required under par. (e) for a pass-through entity if any of the following conditions apply:

1. The amount of withholding tax due under sub. (2) is less than \$500
2. The amount of withholding tax due under sub. (2) is less than \$5,000, the pass-through entity had no withholding tax liability under sub. (2) for the preceding taxable year, and the preceding taxable year was 12 months

(g) Except as provided under par. (h), the amount of each installment required under par. (c) is 25% of the lower of the following amounts:

1. Ninety percent of the withholding tax under sub. (2) due for the taxable year
2. The withholding tax shown on the return under par. (a) for the preceding taxable year.

This paragraph does not apply if the preceding taxable year was less than 12 months or if the pass-through entity did not file a return under par. (a) in the preceding taxable year.

(h) If 22.5% for the first installment, 45% for the 2nd installment, 67.5% for the third installment and 90% for the 4th installment of the tax for the taxable year computed by annualizing, under methods prescribed by the department of revenue, the pass-through entity's income for the months in the taxable year ending before the installment's due date, is less than the installment required in par. (g), the pass-through entity may pay the amount under this paragraph rather than the amount under par. (g). For purposes of computing annualized income under this paragraph, the apportionment percentage computed under s. 71.25(6) and (10) to (12) from the return filed for the previous taxable year may be used if that return was filed with the department of revenue on or before the due date of the installment for which the income is being annualized and if the apportionment percentage on that previous year's return was greater than zero. Any pass-through entity that pays an amount calculated under this paragraph shall increase the next installment computed under par. (g) by an amount equal to the difference between the amount paid under this paragraph and the amount that would have been paid under par. (g).

[par. (i) through (k) should be identical to sec. 71.775(4)(c) through (e) under current law]

(L) If a pass-through entity subject to withholding tax under this section does not file the return required under par. (a) on or before the extension date provided in par. (b), the pass-through entity is liable for the penalty provided in s. 71.83(1), in addition to any unpaid tax, interest, and penalty otherwise assessable to the nonresident partner, member, shareholder, or beneficiary on income from the pass-through entity.

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Lillethun, ✓

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Analysis by the Legislative Reference Bureau

Under current law, partnerships, limited liability companies, tax-option corporations, estates, and trusts are generally referred to as “pass-through entities” because the entities report no income for income and franchise tax purposes but, instead, allocate their income to the partners, members, shareholders, or beneficiaries who report the income on individual income tax returns. Under current law, a pass-through entity must pay withholding tax on Wisconsin income that it allocates to its nonresident partners, members, shareholders, or beneficiaries. The tax is due in a single annual payment.

Under this bill, a pass-through entity pays the withholding tax on the income allocated to nonresident partners, members, shareholders, or beneficiaries in four quarterly installments.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓ ✓
1 **SECTION 1.** 71.775 (4) (a) (intro.) of the statutes is amended to read:

2 71.775 (4) (a) (intro.) Each pass-through entity that is subject to the
3 withholding under sub. (2) shall pay the amount of the tax withheld to file an annual
4 return that indicates the withholding amount paid to the state during the
5 pass-through entity's taxable year. The entity shall file the return with the
6 department no later than:

7 **SECTION 2.** 71.775 (4) (b) of the statutes is repealed.

8 **SECTION 3.** 71.775 (4) (bm) of the statutes is created to read:

9 71.775 (4) (bm) For the return under par. (a), the department shall allow an
10 automatic extension of 7 months or until the corresponding due date of the
11 pass-through entity's federal income tax return or return of partnership income,
12 whichever is later. Except for payments of estimated taxes, withholding taxes payable
13 upon filing the return are not delinquent during the extension period but shall be
14 subject to interest at the rate of 12 percent per year during that period.

15 **SECTION 4.** 71.775 (4) (bn) of the statutes is created to read:

16 71.775 (4) (bn) If a pass-through entity subject to withholding tax under sub.
17 (2) does not file the return under par. (a) on or before the extension date provided in
18 par. (bm), the pass-through entity is liable for the penalty provided in s. 71.83 (1),
19 in addition to any unpaid tax, interest, and penalty otherwise assessable to a
20 nonresident partner, member, shareholder, or beneficiary on income from the
21 pass-through entity.

1 SECTION 5. 71.775 (4) (c) of the statutes is renumbered 71.775 (4) (i).

2 SECTION 6. 71.775 (4) (cm) of the statutes is created to read:

3 71.775 (4) (cm) Pass-through entities shall make estimated payments of the
4 withholding tax under sub. (2) in 4 installments, on or before the 15th day of each
5 of the following months:

6 1. The 3rd month of the taxable year.

7 2. The 6th month of the taxable year.

8 3. The 9th month of the taxable year.

9 4. The 12th month of the taxable year.

10 SECTION 7. 71.775 (4) (d) of the statutes is renumbered 71.775 (4) (j) and
11 amended to read:

12 71.775 (4) (j) A nonresident partner, member, shareholder, or beneficiary of a
13 pass-through entity may claim a credit, as prescribed by the department, on his or
14 her Wisconsin income or franchise tax return for the amount withheld under sub. (2)
15 on his or her behalf for the tax period for which the income of the pass-through entity
16 is reported. ~~For purposes of determining whether interest under s. 71.84 applies to~~
17 ~~a nonresident partner, member, shareholder, or beneficiary, the amount withheld~~
18 ~~under sub. (2) is considered to be paid in 4 equal quarterly installments.~~

19 SECTION 8. 71.775 (4) (dm) of the statutes is created to read:

20 71.775 (4) (dm) Section 71.29 (3), (3m), (4), (5), (6), and (11), as it applies to
21 estimated payments of income and franchise taxes for corporations, also applies to
22 estimated payments of the withholding tax imposed under sub. (2) for pass-through
23 entities.

24 SECTION 9. 71.775 (4) (e) of the statutes is renumbered 71.775 (4) (k).

25 SECTION 10. 71.775 (4) (em) of the statutes is created to read:

1 71.775 (4) (em) Except as provided in par. (fm), in the case of any underpayment
2 of estimated withholding taxes under par. (cm), interest shall be added to the
3 aggregate withholding tax for the taxable year at the rate of 12 percent per year on
4 the amount of the underpayment for the period of the underpayment. In this
5 paragraph, "period of the underpayment" means the time period beginning with the
6 due date of the installment and ending on either the unextended due date of the
7 return under par. (a) or the date of payment, whichever is earlier. If 90 percent of
8 the tax due under sub. (2) for the taxable year is not paid by the unextended due date
9 of the return under par. (a), the difference between that amount and the estimated
10 taxes paid, along with any interest due, shall accrue delinquent interest in the same
11 manner as income and franchise taxes under s. 71.82 (2) (a).

12 SECTION 11. 71.775 (4) (f) of the statutes is repealed.

13 SECTION 12. 71.775 (4) (fm) of the statutes is created to read:

14 71.775 (4) (fm) No interest is required under par. (em) for a pass-through entity
15 if any of the following conditions apply:

16 1. The amount of withholding tax due under sub. (2) is less than \$500.

17 2. The amount of withholding tax due under sub. (2) is less than \$5,000, the
18 pass-through entity had no withholding tax liability under sub. (2) for the preceding
19 taxable year, and the preceding taxable year was 12 months.

20 SECTION 13. 71.775 (4) (g) of the statutes is created to read:

21 71.775 (4) (g) Except as provided under par. (h), the amount of each installment
22 required under par. (cm) is 25 percent of the lesser of the following amounts:

23 1. Ninety percent of the withholding tax under sub. (2) that is due for the
24 taxable year.

2. The withholding tax due under sub. (2) for the preceding taxable year, except that this subdivision does not apply if the preceding taxable year was less than 12 months or if the pass-through entity did not file a return under par. (a) for the preceding taxable year.

SECTION 14. 71.775 (4) (h) of the statutes is created to read:

71.775 (4) (h) If 22.5 percent for the first installment, 45 percent for the 2nd installment, 67.5 percent for the 3rd installment, and 90 percent for the 4th installment of the tax due under sub. (2) for the taxable year; computed by annualizing, under methods prescribed by the department, the pass-through entity's income for the months in the taxable year ending before the installment's due date; is less than the installment required under par. (g), the pass-through entity may pay the amount under this paragraph, rather than the amount under par. (g). For purposes of computing annualized income under this paragraph, the apportionment percentage computed under s. 71.25 (6), (10), and (12) from the return under par. (a) filed for the previous taxable year may be used if that return was filed with the department on or before the due date of the installment for which the income is being annualized and if the apportionment percentage on that previous year's return was greater than zero. Any pass-through entity that pays an amount calculated under this paragraph shall increase the next installment computed under par. (g) by an amount equal to the difference between the amount paid under this paragraph and the amount that would have been paid under par. (g).

SECTION 15. Initial applicability.

(1) This act first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after

1 July 31 this act first applies to taxable years beginning on January 1 of the year
 2 following the year in which this subsection takes effect.

3 (END)

The repeal of ^{section} 71.775(4)(b) and 71.775(4)(f) of the statute,
 the renumbering of section 71.775(4)(c) and 71.775(4)(e) of the
 statute, the renumbering and amendment of section 71.775(4)(d) of
 the statute, the amendment of section 71.775(4)(a) (intro) of
 the statute, and the creation of sections 71.775(4)(lm), 71.775(4)
 (ln), 71.775(4)(cm), 71.775(4)(dm), 71.775(4)(em), 71.775(4)(fm),
 71.775(4)(g) and 71.775(4)(h) of the statute first ^{years} apply to
 taxable years beginning on January 1, 2009.

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Thursday, January 15, 2009 4:24 PM
To: Kreye, Joseph
Subject: FW: DOR comments on LRB 371/P1 - passthrough entity withholding
Attachments: 2nd Review - LRB 371.P1 Passthrough Entity Withholding Estimated Payments.doc

Joe - FYI

From: Gates-Hendrix, Sherrie L - DOR
Sent: Thursday, January 15, 2009 3:30 PM
To: Lillethun, Chad W - DOA
Cc: Raes, Julie M - DOR
Subject: DOR comments on LRB 371/P1 - passthrough entity withholding

Hi Chad --

We had indicated earlier that LRB 371/P1 on passthrough entity withholding was final, however we had neglected to consider that with an effective date of tax years on or after 1/1/09, taxpayers will already have been required to make their first payment by the time the proposal passes. The comments above recommend transitional rule language which gives taxpayers a period of at least 45 days after the enactment date to "catch up" on their estimated payments that would have been due since January 1, 2009.

thanks

Sherrie

01/15/2009

2009-11 LRB Draft Review

Date: January 14, 2009

LRB Number: 0371/P1 (Withholding Tax Quarterly Payments for Pass-Through Entities)

Reviewed by: Wendy Miller

Brief Description of LRB Draft:

Require quarterly estimated payments of Pass-Through Entity Withholding taxes. Under current law, pass-through entity withholding taxes are due annually in a lump sum.

Comments on Draft:

The bill is effective for taxable years beginning on or after January 1, 2009. However, for calendar year pass-through entities, the first quarterly installment would be due on March 15, 2009. If this bill passes, it is likely that it will pass after the deadline of the first required installment payment, or so soon before the first required payment that taxpayers will not be able to make their first payment timely.

Changes Needed & Why:

Add a transitional provision which gives taxpayers a period of at least 45 days after the enactment date to "catch up" on their estimated payments that would have been due since January 1, 2009. Language to revise is as follows:

Amend s. 71.775(4)(g): "Except as provided under pars. (h) or (i), the amount..."

Add s. 71.775(4)(i): "The department shall deem timely paid the estimated payments of the withholding imposed under sub. (2) that become due during the period of January 1, 2009 through the enactment date of par. (cm) provided that such estimated tax payments are paid by the next installment due date that follows in sequence following the enactment date of par. (cm). However, if the next installment due date following the enactment date of par. (cm) is less than 45 days after such enactment date, such estimated payments, in addition to the payment due less than 45 days after such enactment date, shall be deemed timely paid if paid by the next subsequent installment due date."



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0371/P1
JK:nwn&cjs&bjk:rs

PMR

DOA:.....Lillethun, BB0102 - Withholding tax quarterly payments for
pass-through entities

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-15-09

SA ✓

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don't gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, partnerships, limited liability companies, tax-option corporations, estates, and trusts are generally referred to as "pass-through entities" because the entities report no income for income and franchise tax purposes but, instead, allocate their income to the partners, members, shareholders, or beneficiaries who report the income on individual income tax returns. Under current law, a pass-through entity must pay withholding tax on Wisconsin income that it allocates to its nonresident partners, members, shareholders, or beneficiaries. The tax is due in a single annual payment.

Under this bill, a pass-through entity pays the withholding tax on the income allocated to nonresident partners, members, shareholders, or beneficiaries in four quarterly installments.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.775 (4) (a) (intro.) of the statutes is amended to read:

2 71.775 (4) (a) (intro.) Each pass-through entity that is subject to the
3 withholding under sub. (2) shall ~~pay the amount of the tax withheld to~~ file an annual
4 return that indicates the withholding amount paid to the state during the
5 pass-through entity's taxable year. The entity shall file the return with the
6 department no later than:

7 **SECTION 2.** 71.775 (4) (b) of the statutes is repealed.

8 **SECTION 3.** 71.775 (4) (bm) of the statutes is created to read:

9 71.775 (4) (bm) For the return under par. (a), the department shall allow an
10 automatic extension of 7 months or until the corresponding due date of the
11 pass-through entity's federal income tax return or return of partnership income,
12 whichever is later. Except for payments of estimated taxes, withholding taxes payable
13 upon filing the return are not delinquent during the extension period but shall be
14 subject to interest at the rate of 12 percent per year during that period.

15 **SECTION 4.** 71.775 (4) (bn) of the statutes is created to read:

16 71.775 (4) (bn) If a pass-through entity subject to withholding tax under sub.
17 (2) does not file the return under par. (a) on or before the extension date provided in
18 par. (bm), the pass-through entity is liable for the penalty provided in s. 71.83 (1),
19 in addition to any unpaid tax, interest, and penalty otherwise assessable to a
20 nonresident partner, member, shareholder, or beneficiary on income from the
21 pass-through entity.

22 **SECTION 5.** 71.775 (4) (c) of the statutes is renumbered 71.775 (4) (i).

23 **SECTION 6.** 71.775 (4) (cm) of the statutes is created to read:

Except as provided in par. (k)

1 71.775 (4) (cm) Pass-through entities shall make estimated payments of the
2 withholding tax under sub. (2) in 4 installments, on or before the 15th day of each
3 of the following months:

- 4 1. The 3rd month of the taxable year.
- 5 2. The 6th month of the taxable year.
- 6 3. The 9th month of the taxable year.
- 7 4. The 12th month of the taxable year.

8 **SECTION 7.** 71.775 (4) (d) of the statutes is renumbered 71.775 (4) (j) and
9 amended to read:

10 71.775 (4) (j) A nonresident partner, member, shareholder, or beneficiary of a
11 pass-through entity may claim a credit, as prescribed by the department, on his or
12 her Wisconsin income or franchise tax return for the amount withheld under sub. (2)
13 on his or her behalf for the tax period for which the income of the pass-through entity
14 is reported. ~~For purposes of determining whether interest under s. 71.84 applies to~~
15 ~~a nonresident partner, member, shareholder, or beneficiary, the amount withheld~~
16 ~~under sub. (2) is considered to be paid in 4 equal quarterly installments.~~

17 **SECTION 8.** 71.775 (4) (dm) of the statutes is created to read:

18 71.775 (4) (dm) Section 71.29 (3), (3m), (4), (5), (6), and (11), as it applies to
19 estimated payments of income and franchise taxes for corporations, also applies to
20 estimated payments of the withholding tax imposed under sub. (2) for pass-through
21 entities.

22 **SECTION 9.** 71.775 (4) (e) of the statutes is renumbered 71.775 (4) (k).

23 **SECTION 10.** 71.775 (4) (em) of the statutes is created to read:

24 71.775 (4) (em) Except as provided in par. (fm), in the case of any underpayment
25 of estimated withholding taxes under par. (cm), interest shall be added to the

1 aggregate withholding tax for the taxable year at the rate of 12 percent per year on
2 the amount of the underpayment for the period of the underpayment. In this
3 paragraph, "period of the underpayment" means the time period beginning with the
4 due date of the installment and ending on either the unextended due date of the
5 return under par. (a) or the date of payment, whichever is earlier. If 90 percent of
6 the tax due under sub. (2) for the taxable year is not paid by the unextended due date
7 of the return under par. (a), the difference between that amount and the estimated
8 taxes paid, along with any interest due, shall accrue delinquent interest in the same
9 manner as income and franchise taxes under s. 71.82 (2) (a).

10 **SECTION 11.** 71.775 (4) (f) of the statutes is repealed.

11 **SECTION 12.** 71.775 (4) (fm) of the statutes is created to read:

12 71.775 (4) (fm) No interest is required under par. (em) for a pass-through entity
13 if any of the following conditions apply:

14 1. The amount of withholding tax due under sub. (2) is less than \$500.

15 2. The amount of withholding tax due under sub. (2) is less than \$5,000, the
16 pass-through entity had no withholding tax liability under sub. (2) for the preceding
17 taxable year, and the preceding taxable year was 12 months.

18 **SECTION 13.** 71.775 (4) (g) of the statutes is created to read:

19 71.775 (4) (g) Except as provided under par. (h), the amount of each installment
20 required under par. (cm) is 25 percent of the lesser of the following amounts:

21 1. Ninety percent of the withholding tax under sub. (2) that is due for the
22 taxable year.

23 2. The withholding tax due under sub. (2) for the preceding taxable year, except
24 that this subdivision does not apply if the preceding taxable year was less than 12

1 months or if the pass-through entity did not file a return under par. (a) for the
2 preceding taxable year.

3 **SECTION 14.** 71.775 (4) (h) of the statutes is created to read:

4 71.775 (4) (h) If 22.5 percent for the first installment, 45 percent for the 2nd
5 installment, 67.5 percent for the 3rd installment, and 90 percent for the 4th
6 installment of the tax due under sub. (2) for the taxable year; computed by
7 annualizing, under methods prescribed by the department, the pass-through
8 entity's income for the months in the taxable year ending before the installment's due
9 date; is less than the installment required under par. (g), the pass-through entity
10 may pay the amount under this paragraph, rather than the amount under par. (g).
11 For purposes of computing annualized income under this paragraph, the
12 apportionment percentage computed under s. 71.25 (6), (10), and (12) from the return
13 under par. (a) filed for the previous taxable year may be used if that return was filed
14 with the department on or before the due date of the installment for which the income
15 is being annualized and if the apportionment percentage on that previous year's
16 return was greater than zero. Any pass-through entity that pays an amount
17 calculated under this paragraph shall increase the next installment computed under
18 par. (g) by an amount equal to the difference between the amount paid under this
19 paragraph and the amount that would have been paid under par. (g).

20 **SECTION 9343. Initial applicability; Revenue.**

21 (1) The repeal of section 71.775 (4) (b) and (f) of the statutes, the renumbering
22 of section 71.775 (4) (c) and (e) of the statutes, the renumbering and amendment of
23 section 71.775 (4) (d) of the statutes, the amendment of section 71.775 (4) (a) (intro.)

INSERT 5-19

CS
WITHHOLDING TAX FOR PASS-THROUGH ENTITIES

1 of the statutes, and the creation of section 71.775 (4) (bm), (bn), (cm), (dm), (em), (fm),
2 (g), and (h) of the statutes first apply to taxable years beginning on January 1, 2009.

3 (END)

(k) e (L)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0371/P2ins
JK:nwn&cjs&bjk:rs

Insert 5 - 19

SECTION 1. 71.775 (4) (i) of the statutes is created to read:

71.775 (4) (i) The department shall deem timely paid the estimated payments of the withholding ^{tax} imposed under sub. (2) that become due during the period beginning on January 1, 2009, and ending on the effective date of this paragraph [LRB inserts date], provided that such estimated tax payments are paid by the next installment due date that follows in sequence following the effective date of this paragraph [LRB inserts date]. However, if the next installment due date following the effective date of this paragraph [LRB inserts date] is less than 45 days after the effective date of this paragraph [LRB inserts date], such estimated payments, in addition to the payment due less than 45 days after the effective date of this paragraph [LRB inserts date], shall be deemed timely paid if paid by the next subsequent installment due date.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-0371/P2dn
JK:nwn&cs&bjk:rs

stays

Chad (and DOR):

I did not amend s. 71.775 (4) (g) as suggested because s. 71.775 (4) (g) involves the calculation of the installment amount, except as provided in s. 71.775 (4) (h), and not the due date and, therefore, doesn't seem to be effected by s. 71.775 (4) (a).

e affected

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
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not# Instead, I amended s. 71.775 (4) (cm) to begin
except as provided in para (k) E
(L)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

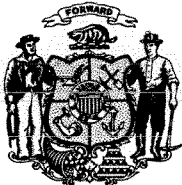
LRB-0371/P2dn
JK:nwn:ph

January 16, 2009

Chad (and DOR):

I did not amend s. 71.775 (4) (g) as suggested because s. 71.775 (4) (g) involves the calculation of the installment amount, except as provided in s. 71.775 (4) (h), and not the due date and, therefore, doesn't seem to be affected by s. 71.775 (4) (L). Instead, I amended s. 71.775 (4) (cm) to begin "Except as provided in par. (L)."

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0371/P2
JK:nwn/cjs/bjk:ph

RMR

DOA:.....Lillethun, BB0102 - Withholding tax quarterly payments for
pass-through entities

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-30-09
D-N

1 ^{don't gen.} AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, partnerships, limited liability companies, tax-option corporations, estates, and trusts are generally referred to as "pass-through entities" because the entities report no income for income and franchise tax purposes but, instead, allocate their income to the partners, members, shareholders, or beneficiaries who report the income on individual income tax returns. Under current law, a pass-through entity must pay withholding tax on Wisconsin income that it allocates to its nonresident partners, members, shareholders, or beneficiaries. The tax is due in a single annual payment.

Under this bill, a pass-through entity pays the withholding tax on the income allocated to nonresident partners, members, shareholders, or beneficiaries in four quarterly installments.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.775 (4) (a) (intro.) of the statutes is amended to read:

2 71.775 (4) (a) (intro.) Each pass-through entity that is subject to the
3 withholding under sub. (2) shall ~~pay the amount of the tax withheld to~~ file an annual
4 return that indicates the withholding amount paid to the state during the
5 pass-through entity's taxable year. The entity shall file the return with the
6 department no later than:

7 **SECTION 2.** 71.775 (4) (b) of the statutes is repealed.

8 **SECTION 3.** 71.775 (4) (bm) of the statutes is created to read:

9 71.775 (4) (bm) For the return under par. (a), the department shall allow an
10 automatic extension of 7 months or until the corresponding due date of the
11 pass-through entity's federal income tax return or return of partnership income,
12 whichever is later. Except for payments of estimated taxes, withholding taxes payable
13 upon filing the return are not delinquent during the extension period but shall be
14 subject to interest at the rate of 12 percent per year during that period.

15 **SECTION 4.** 71.775 (4) (bn) of the statutes is created to read:

16 71.775 (4) (bn) If a pass-through entity subject to withholding tax under sub.
17 (2) does not file the return under par. (a) on or before the extension date provided in
18 par. (bm), the pass-through entity is liable for the penalty provided in s. 71.83 (1),
19 in addition to any unpaid tax, interest, and penalty otherwise assessable to a
20 nonresident partner, member, shareholder, or beneficiary on income from the
21 pass-through entity.

22 **SECTION 5.** 71.775 (4) (c) of the statutes is renumbered 71.775 (4) (i).

23 **SECTION 6.** 71.775 (4) (cm) of the statutes is created to read:

*and except as provided
in sub. 201*

*INSERT
2-14*

1 71.775 (4) (cm) Except as provided in par. (L), pass-through entities shall make
2 estimated payments of the withholding tax under sub. (2) in 4 installments, on or
3 before the 15th day of each of the following months:

- 4 1. The 3rd month of the taxable year.
- 5 2. The 6th month of the taxable year.
- 6 3. The 9th month of the taxable year.
- 7 4. The 12th month of the taxable year.

8 **SECTION 7.** 71.775 (4) (d) of the statutes is renumbered 71.775 (4) (j) and
9 amended to read:

10 71.775 (4) (j) A nonresident partner, member, shareholder, or beneficiary of a
11 pass-through entity may claim a credit, as prescribed by the department, on his or
12 her Wisconsin income or franchise tax return for the amount withheld under sub. (2)
13 on his or her behalf for the tax period for which the income of the pass-through entity
14 is reported. ~~For purposes of determining whether interest under s. 71.84 applies to~~
15 ~~a nonresident partner, member, shareholder, or beneficiary, the amount withheld~~
16 ~~under sub. (2) is considered to be paid in 4 equal quarterly installments.~~

17 **SECTION 8.** 71.775 (4) (dm) of the statutes is created to read:

18 71.775 (4) (dm) Section 71.29 (3), (3m), (4), (5), (6), and (11), as it applies to
19 estimated payments of income and franchise taxes for corporations, also applies to
20 estimated payments of the withholding tax imposed under sub. (2) for pass-through
21 entities.

22 **SECTION 9.** 71.775 (4) (e) of the statutes is renumbered 71.775 (4) (k).

23 **SECTION 10.** 71.775 (4) (em) of the statutes is created to read:

24 71.775 (4) (em) Except as provided in par. (fm), in the case of any underpayment
25 of estimated withholding taxes under par. (cm), interest shall be added to the

1 aggregate withholding tax for the taxable year at the rate of 12 percent per year on
2 the amount of the underpayment for the period of the underpayment. In this
3 paragraph, "period of the underpayment" means the time period beginning with the
4 due date of the installment and ending on either the unextended due date of the
5 return under par. (a) or the date of payment, whichever is earlier. If 90 percent of
6 the tax due under sub. (2) for the taxable year is not paid by the unextended due date
7 of the return under par. (a), the difference between that amount and the estimated
8 taxes paid, along with any interest due, shall accrue delinquent interest in the same
9 manner as income and franchise taxes under s. 71.82 (2) (a).

10 **SECTION 11.** 71.775 (4) (f) of the statutes is repealed.

11 **SECTION 12.** 71.775 (4) (fm) of the statutes is created to read:

12 71.775 (4) (fm) No interest is required under par. (em) for a pass-through entity
13 if any of the following conditions apply:

14 1. The amount of withholding tax due under sub. (2) is less than \$500.

15 2. The amount of withholding tax due under sub. (2) is less than \$5,000, the
16 pass-through entity had no withholding tax liability under sub. (2) for the preceding
17 taxable year, and the preceding taxable year was 12 months.

18 **SECTION 13.** 71.775 (4) (g) of the statutes is created to read:

19 71.775 (4) (g) Except as provided under par. (h), the amount of each installment
20 required under par. (cm) is 25 percent of the lesser of the following amounts:

21 1. Ninety percent of the withholding tax under sub. (2) that is due for the
22 taxable year.

23 2. The withholding tax due under sub. (2) for the preceding taxable year, except
24 that this subdivision does not apply if the preceding taxable year was less than 12

1 months or if the pass-through entity did not file a return under par. (a) for the
2 preceding taxable year.

3 **SECTION 14.** 71.775 (4) (h) of the statutes is created to read:

4 71.775 (4) (h) If 22.5 percent for the first installment, 45 percent for the 2nd
5 installment, 67.5 percent for the 3rd installment, and 90 percent for the 4th
6 installment of the tax due under sub. (2) for the taxable year; computed by
7 annualizing, under methods prescribed by the department, the pass-through
8 entity's income for the months in the taxable year ending before the installment's due
9 date; is less than the installment required under par. (g), the pass-through entity
10 may pay the amount under this paragraph, rather than the amount under par. (g).
11 For purposes of computing annualized income under this paragraph, the
12 apportionment percentage computed under s. 71.25 (6), (10), and (12) from the return
13 under par. (a) filed for the previous taxable year may be used if that return was filed
14 with the department on or before the due date of the installment for which the income
15 is being annualized and if the apportionment percentage on that previous year's
16 return was greater than zero. Any pass-through entity that pays an amount
17 calculated under this paragraph shall increase the next installment computed under
18 par. (g) by an amount equal to the difference between the amount paid under this
19 paragraph and the amount that would have been paid under par. (g).

20 **SECTION 15.** 71.775 (4) (L) of the statutes is created to read:

21 71.775 (4) (L) The department shall deem timely paid the estimated payments
22 of the withholding tax imposed under sub. (2) that become due during the period
23 beginning on January 1, 2009, and ending on the effective date of this paragraph
24 [LRB inserts date], provided that such estimated tax payments are paid by the next
25 installment due date that follows in sequence following the effective date of this

1 paragraph [LRB inserts date]. However, if the next installment due date following
2 the effective date of this paragraph [LRB inserts date], is less than 45 days after
3 the effective date of this paragraph [LRB inserts date], such estimated payments,
4 in addition to the payment due less than 45 days after the effective date of this
5 paragraph [LRB inserts date], shall be deemed timely paid if paid by the next
6 subsequent installment due date.

7 **SECTION 9343. Initial applicability; Revenue.**

8 (1) WITHHOLDING TAX FOR PASS-THROUGH ENTITIES. The repeal of section 71.775
9 (4) (b) and (f) of the statutes, the renumbering of section 71.775 (4) (c) and (e) of the
10 statutes, the renumbering and amendment of section 71.775 (4) (d) of the statutes,
11 the amendment of section 71.775 (4) (a) (intro.) of the statutes, and the creation of
12 section 71.775 (4) (bm), (bn), (cm), (dm), (em), (fm), (g), (h), and (L) of the statutes first
13 apply to taxable years beginning on January 1, 2009.

14 (END)

1.

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0371/P3ins
JK:wnw/cjs/bjk:ph

Insert 2 - 14

***NOTE: This is reconciled s. 71.775 (4) (bm). This SECTION has been affected by drafts with the following LRB numbers: 0371 and 1239.

-0371/P2

-1239/1

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-0371/P3dn
JK:nwn/legis/bjk:ph
↑

This draft reconciles LRB-0371/P2 and LRB-1239/1. Both of these drafts should continue to appear in the compiled bill.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0371/P3dn
JK:nwn:ph

February 2, 2009

This draft reconciles LRB-0371/P2 and LRB-1239/1. Both of these drafts should continue to appear in the compiled bill.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0371/P3
JK:nwn/cjs/bjk:ph

DOA:.....Lillethun, BB0102 - Withholding tax quarterly payments for
pass-through entities

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, partnerships, limited liability companies, tax-option corporations, estates, and trusts are generally referred to as "pass-through entities" because the entities report no income for income and franchise tax purposes but, instead, allocate their income to the partners, members, shareholders, or beneficiaries who report the income on individual income tax returns. Under current law, a pass-through entity must pay withholding tax on Wisconsin income that it allocates to its nonresident partners, members, shareholders, or beneficiaries. The tax is due in a single annual payment.

Under this bill, a pass-through entity pays the withholding tax on the income allocated to nonresident partners, members, shareholders, or beneficiaries in four quarterly installments.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.775 (4) (a) (intro.) of the statutes is amended to read:

2 71.775 (4) (a) (intro.) Each pass-through entity that is subject to the
3 withholding under sub. (2) shall ~~pay the amount of the tax withheld to~~ file an annual
4 return that indicates the withholding amount paid to the state during the
5 pass-through entity's taxable year. The entity shall file the return with the
6 department no later than:

7 **SECTION 2.** 71.775 (4) (b) of the statutes is repealed.

8 **SECTION 3.** 71.775 (4) (bm) 1. of the statutes is created to read:

9 71.775 (4) (bm) 1. For the return under par. (a), the department shall allow an
10 automatic extension of 7 months or until the corresponding due date of the
11 pass-through entity's federal income tax return or return of partnership income,
12 whichever is later. Except for payments of estimated taxes, and except as provided
13 in subd. 2., withholding taxes payable upon filing the return are not delinquent during
14 the extension period but shall be subject to interest at the rate of 12 percent per year
15 during that period.

 ****NOTE: This is reconciled s. 71.775 (4) (bm) . This SECTION has been affected by
drafts with the following LRB numbers: 0371/P2 and 1239/1.

16 **SECTION 4.** 71.775 (4) (bn) of the statutes is created to read:

17 71.775 (4) (bn) If a pass-through entity subject to withholding tax under sub.
18 (2) does not file the return under par. (a) on or before the extension date provided in
19 par. (bm), the pass-through entity is liable for the penalty provided in s. 71.83 (1),
20 in addition to any unpaid tax, interest, and penalty otherwise assessable to a
21 nonresident partner, member, shareholder, or beneficiary on income from the
22 pass-through entity.

23 **SECTION 5.** 71.775 (4) (c) of the statutes is renumbered 71.775 (4) (i).

1 **SECTION 6.** 71.775 (4) (cm) of the statutes is created to read:

2 71.775 (4) (cm) Except as provided in par. (L), pass-through entities shall make
3 estimated payments of the withholding tax under sub. (2) in 4 installments, on or
4 before the 15th day of each of the following months:

5 1. The 3rd month of the taxable year.

6 2. The 6th month of the taxable year.

7 3. The 9th month of the taxable year.

8 4. The 12th month of the taxable year.

9 **SECTION 7.** 71.775 (4) (d) of the statutes is renumbered 71.775 (4) (j) and
10 amended to read:

11 71.775 (4) (j) A nonresident partner, member, shareholder, or beneficiary of a
12 pass-through entity may claim a credit, as prescribed by the department, on his or
13 her Wisconsin income or franchise tax return for the amount withheld under sub. (2)
14 on his or her behalf for the tax period for which the income of the pass-through entity
15 is reported. ~~For purposes of determining whether interest under s. 71.84 applies to~~
16 ~~a nonresident partner, member, shareholder, or beneficiary, the amount withheld~~
17 ~~under sub. (2) is considered to be paid in 4 equal quarterly installments.~~

18 **SECTION 8.** 71.775 (4) (dm) of the statutes is created to read:

19 71.775 (4) (dm) Section 71.29 (3), (3m), (4), (5), (6), and (11), as it applies to
20 estimated payments of income and franchise taxes for corporations, also applies to
21 estimated payments of the withholding tax imposed under sub. (2) for pass-through
22 entities.

23 **SECTION 9.** 71.775 (4) (e) of the statutes is renumbered 71.775 (4) (k).

24 **SECTION 10.** 71.775 (4) (em) of the statutes is created to read:

1 71.775 (4) (em) Except as provided in par. (fm), in the case of any underpayment
2 of estimated withholding taxes under par. (cm), interest shall be added to the
3 aggregate withholding tax for the taxable year at the rate of 12 percent per year on
4 the amount of the underpayment for the period of the underpayment. In this
5 paragraph, "period of the underpayment" means the time period beginning with the
6 due date of the installment and ending on either the unextended due date of the
7 return under par. (a) or the date of payment, whichever is earlier. If 90 percent of
8 the tax due under sub. (2) for the taxable year is not paid by the unextended due date
9 of the return under par. (a), the difference between that amount and the estimated
10 taxes paid, along with any interest due, shall accrue delinquent interest in the same
11 manner as income and franchise taxes under s. 71.82 (2) (a).

12 **SECTION 11.** 71.775 (4) (f) of the statutes is repealed.

13 **SECTION 12.** 71.775 (4) (fm) of the statutes is created to read:

14 71.775 (4) (fm) No interest is required under par. (em) for a pass-through entity
15 if any of the following conditions apply:

- 16 1. The amount of withholding tax due under sub. (2) is less than \$500.
- 17 2. The amount of withholding tax due under sub. (2) is less than \$5,000, the
18 pass-through entity had no withholding tax liability under sub. (2) for the preceding
19 taxable year, and the preceding taxable year was 12 months.

20 **SECTION 13.** 71.775 (4) (g) of the statutes is created to read:

21 71.775 (4) (g) Except as provided under par. (h), the amount of each installment
22 required under par. (cm) is 25 percent of the lesser of the following amounts:

- 23 1. Ninety percent of the withholding tax under sub. (2) that is due for the
24 taxable year.

1 2. The withholding tax due under sub. (2) for the preceding taxable year, except
2 that this subdivision does not apply if the preceding taxable year was less than 12
3 months or if the pass-through entity did not file a return under par. (a) for the
4 preceding taxable year.

5 **SECTION 14.** 71.775 (4) (h) of the statutes is created to read:

6 71.775 (4) (h) If 22.5 percent for the first installment, 45 percent for the 2nd
7 installment, 67.5 percent for the 3rd installment, and 90 percent for the 4th
8 installment of the tax due under sub. (2) for the taxable year; computed by
9 annualizing, under methods prescribed by the department, the pass-through
10 entity's income for the months in the taxable year ending before the installment's due
11 date; is less than the installment required under par. (g), the pass-through entity
12 may pay the amount under this paragraph, rather than the amount under par. (g).
13 For purposes of computing annualized income under this paragraph, the
14 apportionment percentage computed under s. 71.25 (6), (10), and (12) from the return
15 under par. (a) filed for the previous taxable year may be used if that return was filed
16 with the department on or before the due date of the installment for which the income
17 is being annualized and if the apportionment percentage on that previous year's
18 return was greater than zero. Any pass-through entity that pays an amount
19 calculated under this paragraph shall increase the next installment computed under
20 par. (g) by an amount equal to the difference between the amount paid under this
21 paragraph and the amount that would have been paid under par. (g).

22 **SECTION 15.** 71.775 (4) (L) of the statutes is created to read:

23 71.775 (4) (L) The department shall deem timely paid the estimated payments
24 of the withholding tax imposed under sub. (2) that become due during the period
25 beginning on January 1, 2009, and ending on the effective date of this paragraph

1 [LRB inserts date], provided that such estimated tax payments are paid by the next
2 installment due date that follows in sequence following the effective date of this
3 paragraph [LRB inserts date]. However, if the next installment due date following
4 the effective date of this paragraph [LRB inserts date], is less than 45 days after
5 the effective date of this paragraph [LRB inserts date], such estimated payments,
6 in addition to the payment due less than 45 days after the effective date of this
7 paragraph [LRB inserts date], shall be deemed timely paid if paid by the next
8 subsequent installment due date.

9 **SECTION 9343. Initial applicability; Revenue.**

10 (1) WITHHOLDING TAX FOR PASS-THROUGH ENTITIES. The repeal of section 71.775
11 (4) (b) and (f) of the statutes, the renumbering of section 71.775 (4) (c) and (e) of the
12 statutes, the renumbering and amendment of section 71.775 (4) (d) of the statutes,
13 the amendment of section 71.775 (4) (a) (intro.) of the statutes, and the creation of
14 section 71.775 (4) (bm) 1., (bn), (cm), (dm), (em), (fm), (g), (h), and (L) of the statutes
15 first apply to taxable years beginning on January 1, 2009.

16 (END)